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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,584	12/12/2003	Erich J. Schlosser	WEB-954-US	1733

61215 7590 01/23/2008  
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EXAMINER
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COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

MAIL DATE	DELIVERY MODE
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01/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/735,584

Applicant(s)

SCHLOSSER ET AL.

Examiner

Josiah Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-23, 25-27 and 29 is/are rejected.
- 7) ☒ Claim(s) 5-7, 24, 28, 30 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 November 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Receipt of applicant's amendment filed November 6, 2007 is acknowledged.

***Drawings***

2. The drawings filed November 6, 2007 are accepted by the examiner.

***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Applicant has amended the independent claims to recite that the plurality of openings have an axis which is aligned vertically and extends through the entire cooking grate to permit convection of heated air from a lower portion of the cooking chamber to an upper portion of the cooking chamber. The examiner notes that at least this functionality is clearly described on at least p. 3, lines 27-29, and at least Figs. 3-6 show that the openings (46) extend vertically through the entire cooking grate. However, the claim terminology now describing the openings as "having an axis which is aligned vertically and extending through the entire cooking grate" does not appear in the specification. As this description is supported by the disclosure as originally filed, applicant should amend the specification to provide proper antecedent basis for the claim terminology.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claim 25** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites the limitation "'the lower grease control structure" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. As best can be determined and for the purpose of an examination on the merits, it appears that claim 25 was intended to be dependent upon claim 24 which introduces a lower grease control structure. Correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-4, 8, 9, 11, 13-18, 21-23, 26, 27, and 29** are rejected under 35 U.S.C. 102(b) as being anticipated by **U.S. Patent No. 5,105,725 to Haglund ("Haglund")**.

Art Unit: 3749

Haglund discloses in the specification and figures 1-15 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 1-4, 8, 9, 11, 13-18, 21-23, 26, 27, and 29.

**In particular, in regard to at least claims 1, 11, 13-15, 26, and 27,** Haglund shows a barbecue grill assembly (see Fig. 3) comprising: a cooking chamber (18); a gas burner (20) positioned in a lower portion of the cooking chamber (see Fig. 3); and a cooking grate/grid (2 or 68, Fig. 14) removably positioned in the cooking chamber and adjacent the gas burner (see Fig. 3). The cooking grate includes a cooking surface made of upper surfaces of a plurality of cooking members (8 or 71, Fig. 14) to define an upper cooking plane (see col. 5, lines 38-40) and a lower surface (4 or 69). The cooking grate further has a solid energy receptor portion formed, for instance in the embodiment of Fig. 15, by the solid rib portions (70) which serve to form a channel for convective gases that heat the underside of the grid (see col. 11, lines 22-25). These portions (70) are positioned in close proximity to the burner (note the grid of Fig. 14 would be positioned in the same relationship to a burner as shown in the embodiment of Fig. 3). The plurality of cooking members/rails (71) depend from the solid energy receptor portions/ribs (70).

Further, a plurality of openings (10) are arranged between the cooking member (71) (see Fig. 15) where each opening has an axis that is aligned vertically and extending through the entire cooking grate to permit convection of heated air from a lower portion of the cooking chamber to the upper portion of the cooking chamber (see Fig. 15 and col. 5, lines 66 through col. 6, line 1, col. 6, lines 33-39, and col. 11, lines 26-32). No openings extend through the portions/ribs (70) (i.e. the solid energy receptor portions).

Art Unit: 3749

Additionally, when the grill assembly of Fig. 14 is placed in a cooking device (2) in the manner shown in Fig. 3, the solid energy receptor portion /rib (70) would be positioned directly above the gas burner (20) such that no structure is located between the gas burner and the solid energy receptor portion of the cooking grate.

**In further regard to claim 11**, as shown in Figs. 3-5, the cooking grill assembly includes a gas burner (20) that includes multiple burner sections having multiple flames sections (flames from holes 28) including those that are arranged generally transverse to one another (see sides and end at 26 of the burner 20). Further, as shown in Fig. 3, when grate/grid (68, Fig. 15) is placed is placed above the burner, in the manner show in Fig. 3, at least portions of the /solid energy receptor/ribs (70) form a lower energy receptor plane including a first section (any section of the length of ribs 70 running left to right in Fig. 3) having some length that is parallel to the end portions (at 26) of burner (20) and a second section (the v-shaped width of the ribs 70) that is parallel to sides of burner (20).

**In regard to at least claims 2, 16, 18**, the cooking grate (68) is understood to have a mass and a substantial portion of the mass of the grate would be understood to reside in the ribs/energy receptor portions (70) as recited.

**In regard to at least claim 3**, receptor portion/rib (70) has a thickness extending from the lower surface (69) to a distance below the cooking surface (rails 71) (see Fig. 15).

**In regard to at least claims 4 and 27**, the ribs (70) are sloped to form a grease control structure configured on an upper surface of these ribs that would function to direct grease through the openings between the cooking members (note col. 6, lines 64-66).

Art Unit: 3749

**In regard to at least claim 8**, the top surface of base portion (69) forms the recited intermediate plane.

**In regard to at least claim 9**, at least some of the mass of the cooking grate is understood to be located in the base (69) itself, which is between the top (intermediate plane) and bottom (lower surface) surfaces of the base, and is regarded as a "substantial" portion of the mass.

**In regard to at least claim 21**, the energy receptor surface (surfaces of channel 72 formed below ribs 70) receives radiant and convective energy from the gas burner, wherein energy is distributed through the energy receptor portion, and wherein conductive energy is transferred from the energy receptor portion of the cooking grate to the cooking members of the cooking grate (see col. 11, lines 19-25).

**In regard to at least claims 22 and 29**, the upper inclined surfaces of the ribs (70) are regarded as the recited plurality of ribs having at least one inclined surface extending downward toward the lower portion of the cooking chamber.

**In regard to at least claim 23**, an apex of the inclined surfaces of the ribs (70) is below the cooking surface formed by rails (71).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3749

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. **Claims 10, 12, 19, and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **U.S. Patent No. 5,105,725 to Haglund** ("Haglund").

Haglund teaches all the limitations of claims 10, 12, 19, and 20 (note discussion above) with the exception of the recitation that the mass of the cooking rate located in the solid energy receptor portion is over 65% (claim 10) or over 30 % (claim 18) of the mass of the cooking grate, that the distance between the energy receptor and burner is less than 3 inches (claim 12),



Art Unit: 3749

or that the surface area of the openings is approximately 30% of a total surface area of the grate (claim 20).

However, it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive, to discover the optimum or workable ranges by routine experimentation." (see MPEP 214405(II)(A) (citing *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233,235 (CCPA 1955)). In this case, Haglund clearly teaches that the relative size of the supports for the cooking rails (e.g. 71) are variable (see Figs. 11-14), the size of the cooking grate is variable (see col. 3, lines 25-31), the shape of the openings is variable (see col. 3, lines 15-17), the surface area covered by the openings is variable (see col. 6, lines 57-62). Accordingly, in varying these factors, and in particular the area covered by the openings (note the energy receptor portions have no openings) a person of ordinary skill in the art would necessarily seek to optimize the size of the cooking grate and the number of openings to provide for an appropriate balance between the space for heated air to circulate to food products on the grill and the space available for fat collection (see col. 6, lines 57 through col. 7, line 11). Accordingly, the selection of the recited mass percentages of claims 10 and 18 and the surface area of the openings (claim 20) would clearly be obtainable through routine experimentation and does not serve to patentably distinguish applicant's invention.

In regard to claim 12, as shown at least in Fig. 3, the burner is positioned near the bottom of the cooking grate (2). A person of ordinary skill in the art would reasonably select a distance of "less than 3 inches" for the distance illustrated as simply a matter of design choice.

***Allowable Subject Matter***

12. **Claims 5-7, 24, 28, 30, and 31** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. **Claim 25** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

14. Applicant's arguments with respect to claims 1-4, 6-23, 25-27, and 29 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment and arguments filed November 6, 2007 as to the distinction of the above noted claims over the previously cited prior art are persuasive. However, as noted above these claims are now rejected over the newly discovered reference to Haglund.

In regard to applicant's inquiry appearing on page 13 of the response under the heading Information Regarding Co-pending Application, the cited co-pending applications have been reviewed as requested.

*Conclusion*

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister, can be reached (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 3749

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc

January 17, 2008

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749